



**ROUND-TABLE:
RECOMMENDATION (2008)2
OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON EFFICIENT DOMESTIC
CAPACITY FOR RAPID EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS**

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court judgments”**

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The views expressed are those of the author only.



**REPUBLIC OF ALBANIA
MINISTRY OF JUSTICE
STATE ADVOCACY
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Tirana, on December 15, 2011

**SUBJECT-MATTER: THE STEPS FOLLOWED BY REPUBLIC OF ALBANIA
FOR DRAFTING AND ADOPTING THE ACTION PLAN
ON THE PROPERTY ISSUES.**

1. European Court is examining many cases related to non-enforcement of final domestic courts' decisions concerning the property claims of former owners for restitution and compensation of properties in appliance of law no. 9235, dated 29.07.2004 "On restitution and compensation of properties".

2. Hitherto, the Court has deliberated 19 judgements out of 58 cases in total having this problematic. Meanwhile, the Court is expected to deliberate its decisions on the remining 39 cases. The violations found in such cases concern the non enforcement of decisions of local comissions for restitution and compensation of properties, which are considered to constitute property titles and according to the Court assessment can be considered as *quasi judicial* decisions based on the article 6 of the Convention.

3. The property issues in such cases has been considered alltogether with violations related to article 6 (*the right for a fair trial*), article 13 (*the right for effective domestic remedies*) article 14 (*the right for non discrimination*) of the Convention. Thus, in the majority of cases the property right has not been discussed in its classic meaning, but in view of other forms such as the rights originating from conctractual relations (*e.g. Topallaj v. Albania*), the right for construction permit (*e.g. Mullai v. Albania, Siliqi v. Albania*), the right of land liberation (*e.g. Bushati v. Albania*), in the form of right for payment money, etc.

4. The Committee of Ministers of the Council of Europe, after having analysed thoroughly all the property cases for Albania, has finally identified that the violations found were scaled to a large category of individuals, who were expropriated during the comunist regime after year 1944. Considering the fact that: (i) the total value of penalisation of Albanian Government in only 12 cases reached the amount 6.527.376 Euro, (ii) the deliver of decisions is expected on 39 pending cases, (iii) the communication of 50 other new cases having the same subject-matter is expected, the European Court send the message to Albanian Party that there was the need to seriously reflect on carrying on deep structural reforms, to avoid the expected financial burden for Albanian party, likewise to avoid the overload of the Court with repetitive cases.

5. At the same time, Commitee of Ministers of Council of Europe as a monitoring body for the execution of European Court judgements, based on the article 54 of European Convention, after

having analysed the property cases concerning general and individual measures, decided that Albanian Party should be seriously engaged in drafting an Action Plan that would offer final and sustainable redress for violations related to property right.

6. In this context is worthy to mention the assistance that Council of Europe has offered by including Albania in the project “Removing the obstacles related to the non-enforcement of final domestic judicial decisions”, supported by the the Human Rights Trust Fund, based on an agreement concluded on March 28, 2008. Albania, as a benefiting country avails itselfs of this event to express its gratitude as to the contribute offered by this project since it took effect on May 1, 2009.

7. Further, the ECtHR Decisions Execution Department (DG-HL) on May 20, 2010, adopted a Memorandum with classified content, for the presentation of situation in Albania concerning the cases of non-enforcement of domestic final judicial decisions related to the claims of expropriated owners, for restitution and compensation of properties. Such Memorandum, aimed to assist the Commitee during the monitoring porcess of execution of ECtHR judgements for Albania, that pose structural problematic related to the property issues, considering them as a matter of urgency.

8. In its 1086-meeting dated June 3, 2010, Committee of Ministers (CM) relying on the content of this Memorandum, has examined the general and individual measures for execution of judgements on 5 property application (i.e. *Driza, Beshiri, Rramadhi, Hamzaraj dhe Nuri*). In its decision for these cases, CM welcomed the measures proposed by Albanian authorities, inviting them to prepare an Action Plan with concrete administrative, legal, and structural measures for removing all the obstacles related to the claims of expropriated owners, which have been considered as structural problems that call for urgent solutions. On this occasion, CM has declassified the Memorandum content, considering the examination of these cases open until its next 1100 metting of December 2010.

9. Reflecting on the content of Memorandum, seems that the property violations in Albanian cases, are related to the problems and difficulties faced:

- While implementing law no. 9235, dated 29.07.2004 “On restitution and compensation of properties”;
- During process for the registration of properties;
- Because of lack of effective domestic remedies in what concerns the non execution of final courts’ decisions.

10. In compliance with CM decision, having in mind the problematic as identified in the Memorandum, Albanian Party undertook to draft an Action Plan within December 2010. Based on Order no. 169, dated 17.09.2010 of the Prime Minister a high-level Inter-ministerial Committee has been established. This Committee was chaired by the Minister of Justice and was composed by high representatives from the Ministry of Justice, Ministry of Finance, Ministry of Economy, Trade and Energy, Ministry of Interior, the Governmental Land Commission, General Advocacy, the Agency for Restitution and Compensation of Properties, the Headquarter Immovable Properties Registration Office, etc.

11. The Inter-ministerial Committee held its first meeting on October 29, 2010. During this meeting the members of Committee were preliminarily introduced with the problematic at stake. At the same time, they were introduced with the first draft Action Plan as prepared by the General Advocacy, in the capacity of the competent governmental body charged according to law to represent the Government of Albania in front of the European Court of Human Rights.

At the end of the first meeting, the Committee decided that the measures proposed in the first draft to be further discussed in detail by technical level experts of the participating institutions.

12. The State Advocacy itself compiled a rough first draft based on the information it had acquired during the exercise in time of its competences, the legal framework in force related to properties and on the Memorandum. Then, the State Advocacy compiled a questionnaire addressed to the state institutions involved in the process. The questions relevant to each institution were sent to them officially. The purpose of the questionnaire was to have a view of each of them tasks and involvement in the process dealing with the properties. Also, the questionnaire aimed to identify the weak points of each institution work. After having the feedback from the said institution the information gathered was analyzed and the problems indentified. Further, the staff of the State Advocacy dealing with the Strasburg applications, if necessary, had meetings with the heads of the institutions at stake to clarify any unclear matter or to obtain further details on various issues of their everyday work. Thereafter, the State Advocacy staff laid down all the problems that were identified in the first draft of the action plan that was presented (*as mentioned above*) in the first meeting of the Inte-ministerial Committee.

12. The technical experts have been summoned, coordinated and monitored by the General Advocacy, in several ongoing meetings (*10 such meetings during the period January 25, 2011 - March 22, 2011*). Concretely, the measures discussed dealt mainly with the first registration process of immovable properties, restitution and compensation of properties, enforcement of final judicial decisions from the bailiffs service, implementation of law on extra-judicial obligations of the public administration. The measures that needed support at political level had been referred to the Inter-ministerial Committee and to the Prime Minister.

13. The Inter-Ministerial Committee approved the final draft of Action Plan in its second meeting on March 23, 2011.

14. The final Draft has been subject of discussion with groups of interest and stakeholders, in the first days of April 2011.

15. In addition, it is worthy to mention here the added contribution of the meeting held on April 7, 2011, in Tirana, between the representatives of Execution Department and the technical experts, which discussed about the Albanian intended measures and Action Plan.

16. Finally, the final draft version the Action Plan has been submitted for ultimate approval to the Council of Ministers of Republic of Albania. The latter adopted it on April 29, 2010 (*Council of Ministers Decision no. 350*). The Albanian Party, because of the intensive course of the process, managed to discuss, in principle, the Action Plan only during the CM meeting held in December 2010 and March 2011, whilst the finally adopted Action Plan was submitted to the CM in its next meeting of June 2011.

17. The CM welcomed the content of the said Action Plan finding very encouraging the proposed measures. It decided to submit the Action Plan for detailed examination in the coming meeting as of September 13-14, 2011.

18. The measures proposed have currently been dispatched to all the involved institutions in order to take their concrete steps of implementation. The State Advocacy in capacity of coordinating body in this process keeps ongoing contacts with such institutions in view of the total implementation of the entire measures adopted in the Action Plan.